

GARTEISER HONEA – TRIAL ATTORNEYS

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15 Attorneys for Plaintiff
16 **BLUE SPIKE LLC**

17 **IN THE UNITED STATES DISTRICT COURT**
18 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

19 BLUE SPIKE LLC,

20 Plaintiff,

21 v.

22 SPOTIFY USA INC., SPOTIFY AB,
23 SPOTIFY TECHNOLOGY S.A.

24 Defendants.
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Civil Case No.: 2:18-cv-03970

**FIRST AMENDED
COMPLAINT FOR PATENT
INFRINGEMENT**

JURY TRIAL DEMANDED

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1
2 Plaintiff Blue Spike, LLC (“Blue Spike” or “Plaintiff”) files this complaint
3 against the above-named Defendants (collectively, “Defendant” or “Spotify”),
4 alleging 5 counts of infringement of the following 5 Patents-in-Suit:
5

6 1. U.S. Patent 7,159,116 B2, titled “Systems, methods and devices for
7 trusted transactions” (the ’116 Patent).

8 2. U.S. Patent 8,538,011 B2, titled “Systems, methods and devices for
9 trusted transactions” (the ’011 Patent).

10 3. U.S. Patent 7,813,506 B2, titled “System and methods for permitting
11 open access to data objects and for securing data within the data objects” (the ’506
12 Patent).

13 4. U.S. Patent 7,664,263 B2, titled “Method for combining transfer
14 functions and predetermined key creation” (the ’263 Patent).

15 5. U.S. Patent 8,265,276 B2, titled “Method for combining transfer
16 functions and predetermined key creation” (the ’276 Patent).

17 *See Exhibits 2–6.*

18 NATURE OF THE SUIT

19 1. This is a claim for patent infringement arising under the patent laws of the
20 United States, Title 35 of the United States Code.
21

22 PARTIES

23
24 2. Plaintiff Blue Spike, has its headquarters and principal place of business at
25 1820 Shiloh Road, Suite 1201-C, Tyler, Texas 75703. Blue Spike, LLC is the
26 exclusive licensee of the Patents-in-Suit, and has ownership of all substantial rights
27 in the Patents-in-Suit, including the rights to grant sublicenses, to exclude others
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1 from using it, and to sue and obtain damages and other relief for past and future acts
2 of patent infringement.

3
4 3. On information and belief, Defendant Spotify USA Inc. is a corporation
5 established under the laws of the State of Delaware, with its place of business at
6 9200 Sunset Blvd, Los Angeles, California 90024. Spotify USA Inc. is a wholly-
7 owned subsidiary of Spotify AB. Defendant can be served through its registered
8 agent, National Registered Agents, Inc., located at 818 West Seventh Street, Suite
9 930, Los Angeles, California 90017.

10
11 4. On information and belief, Defendant Spotify AB is a company organized under
12 the laws of Sweden, with its principal place of business at Reeegeringsgatan 19, SE-
13 111 53 Stockholm, Sweden. Spotify AB is a wholly-owned subsidiary of Spotify
14 Technology S.A. Defendant can be served along with and through its general
15 manager, Spotify USA Inc. *See* California Code of Civil Procedure Section 416.10(b);
16 *Falco v. Nissan N. Am. Inc.*, 987 F. Supp. 2d 1071, 1075–76 (C.D. Cal. 2013).
17
18

19
20 5. On information and belief, Defendant Spotify Technology S.A. is a company
21 organized under the laws of the Grand Duchy of Luxembourg, with its principal
22 place of business at 42-44, Avenue De La Gare, Luxembourg L-1610. Defendant can
23 be served along with and through its subsidiary, Spotify USA Inc. *See* California
24 Code of Civil Procedure Section 416.10(b); *Falco v. Nissan N. Am. Inc.*, 987 F. Supp.
25 2d 1071, 1075–76 (C.D. Cal. 2013).
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JURISDICTION AND VENUE

1
2 6. This lawsuit is a civil action for patent infringement arising under the patent
3 laws of the United States, 35 U.S.C. § 101 *et seq.* The Court has subject-matter
4 jurisdiction pursuant to 28 U.S.C. §§ 1331, 1332, 1338(a), and 1367.
5

6 7. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b)-(c) and
7 1400(b) because Defendant has a regular and established place of business in this
8 District. *See*, 28 U.S.C § 1400(b); *TC Heartland LLC v. Kraft Foods Group Brands*
9 *LLC*, 137 S. Ct. 1514, 1521 (2017); *In re Cray Inc.*, 871 F.3d 1355, 1360–4 (Fed. Cir.
10 2017). Foreign corporations that do not reside in the United States are subject to
11 suit under 28 U.S.C § 1391(c)(3) in any judicial district.
12

13 8. The Court has personal jurisdiction over Defendant for the following:
14 (1) Defendant has committed acts of patent infringement and contributed to and
15 induced acts of patent infringement by others in this District; (2) Defendant
16 regularly does business or solicits business in this District; (3) Defendant engages in
17 other persistent courses of conduct and derives substantial revenue by its offering of
18 infringing products and services and providing infringing products and services in
19 this District; and (4) Defendant has purposefully established substantial, systematic,
20 and continuous contacts with this District and should reasonably expect to be haled
21 into court here by its offering of infringing products and services and providing
22 infringing products and services in this District.
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FACTUAL BACKGROUND

1
2 9. Protection of intellectual property is a prime concern for creators and
3 publishers of digitized copies of copyrightable works, such as musical recordings,
4 movies, video games, and computer software. Blue Spike founder Scott Moskowitz
5 pioneered—and continues to invent—technology that makes such protection
6 possible.
7

8
9 10. Blue Spike is a company focused on innovation with research and
10 development. Blue Spike does not make a service that competes directly with
11 Defendant, but Blue Spike has licensed its pioneering patents to competitors of
12 Defendant.
13

14 11. Blue Spike is a practicing entity. Blue Spike provides pre-release tracking
15 technology for audio, like new music artists' singles, that may be sent to various
16 radio stations for promotional purposes. This type of tracking helps an artist know
17 whether a radio station improperly posts the song for sale rather than simply
18 playing it as a “demo only.” Blue Spike also has other service offerings at
19 bluesspike.com.
20
21

22 12. Moskowitz is a senior member of the Institute of Electrical and Electronics
23 Engineers (IEEE), a member of the Association for Computing Machinery, and the
24 International Society for Optics and Photonics (SPIE). As a senior member of the
25 IEEE, Moskowitz has peer-reviewed numerous conference papers and has
26 submitted his own publications.
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1 13. Moskowitz is an inventor on more than 110 patents, including forensic
2 watermarking, signal abstracts, data security, software watermarks, service license
3 keys, deep packet inspection, license code for authorized software and bandwidth
4 securitization.
5

6 14. The National Security Agency (NSA) even took interest in his work after he
7 filed one of his early patent applications. The NSA marked the application
8 “classified” under a “secrecy order” while it investigated his pioneering innovations
9 and their impact on national security.
10

11 15. As an industry trailblazer, Moskowitz has been a public figure and an active
12 author on technologies related to protecting and identifying software and
13 multimedia content. A 1995 *New York Times* article—titled “TECHNOLOGY:
14 DIGITAL COMMERCE; 2 plans for watermarks, which can bind proof of
15 authorship to electronic works”—recognized Moskowitz’s company as one of two
16 leading software start-ups in this newly created field. *Forbes* also interviewed
17 Moskowitz as an expert for “Cops Versus Robbers in Cyberspace,” a September 9,
18 1996 article about the emergence of digital watermarking and rights-management
19 technology. He has also testified before the Library of Congress regarding the
20 Digital Millennium Copyright Act.
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25 16. Moskowitz has spoken to the RSA Data Security Conference, the International
26 Financial Cryptography Association, Digital Distribution of the Music Industry,
27 and many other organizations about the business opportunities that digital
28

1 watermarking creates. Moskowitz also authored *So This Is Convergence?*, the first
2 book of its kind about secure digital-content management. This book has been
3 downloaded over a million times online and has sold thousands of copies in Japan,
4 where Shogakukan published it under the name *Denshi Skashi*, literally “electronic
5 watermark.” Moskowitz was asked to author the introduction to *Multimedia Security*
6 *Technologies for Digital Rights Management*, a 2006 book explaining digital-rights
7 management. Moskowitz authored a paper for the 2002 International Symposium
8 on Information Technology, titled “What is Acceptable Quality in the Application
9 of Digital Watermarking: Trade-offs of Security, Robustness and Quality.” He also
10 wrote an invited 2003 article titled “Bandwidth as Currency” for the *IEEE Journal*,
11 among other publications.
12

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16 17. Moskowitz and Blue Spike continue to invent technologies that protect
17 intellectual property from unintended use or unauthorized copying.
18

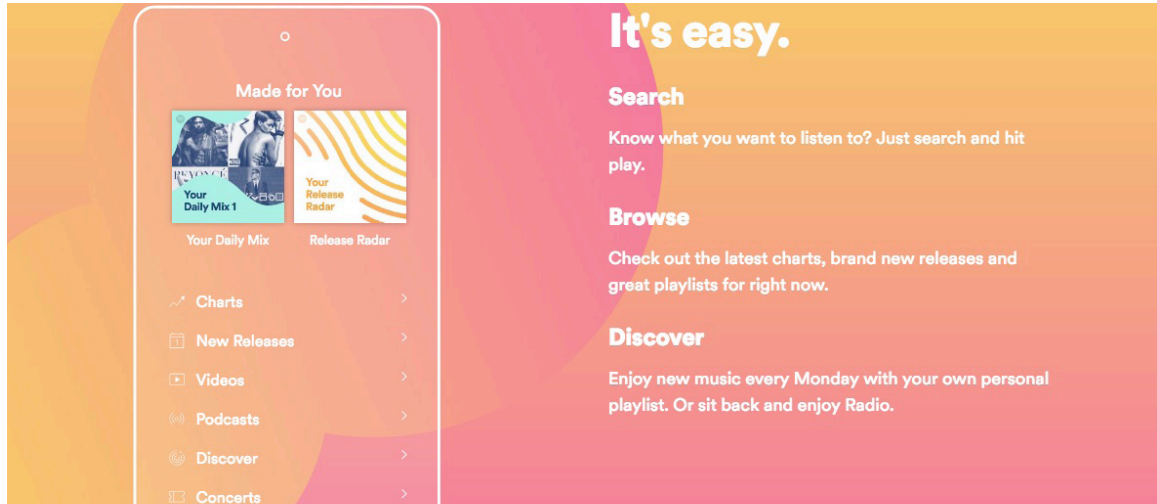
19 THE ACCUSED PRODUCTS AND SERVICES

20 18. Defendant makes, uses, offers for sale and sells in the U.S. products, systems,
21 and/or services that infringe the Patents-in-Suit, including, but not limited to,
22 Spotify Music Services (“Accused Products and Services”). Defendant offers a
23 method of conducting a trusted transaction through their premium media streaming
24 services.
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26
27 19. Defendant provides digital content via online media streaming through its
28 web player.

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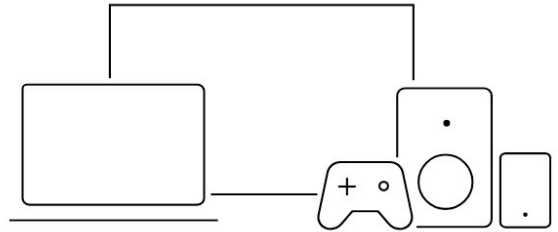


Figure 1 – Screenshot of Defendant offering of Accused Products and Services on Spotify webpage, as viewed at <https://www.spotify.com/us/>.

20. Defendant has not sought or obtained a license for any of Blue Spike’s patented technologies. This creates a competitive disadvantage to other Companies, like Apple, Acer, Dell, IBM, Samsung, and Sony to name some large companies, who recognized the value and novelty Blue Spike’s patents provide to society.

21. Each count of patent infringement contained herein is accompanied by a representative claim. *See, Atlas IP LLC v. P. Gas and Electric Co.*, 15-CV-05469-EDL, 2016 WL 1719545, at *5 (N.D. Cal. Mar. 9, 2016) (“*Iqbal* and *Twombly* only require

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1 Plaintiff to state a plausible claim for relief, which can be satisfied by adequately
2 pleading infringement of one claim.”).

3
4 22. Defendant uses steganographically ciphered software to encrypt digital media
5 (music) files. There is a code embedded into the digital content that tells the player
6 that the file is encrypted and the URL to get the license from in order to unencrypt
7 the file. Defendant’s application uses encrypted media extensions via an application
8 programming interface to connect to the license server and sends a content
9 identification to the server. The license server then receives the content
10 identification, as well as an authentication key (generating a username and password
11 entered by the user), a device identifier, et cetera; retrieves the key for the content;
12 wraps it into a license and sends it back to the application. The application’s content
13 decryption module (CDM) receives the license, unwraps the key inside and decrypts
14 the content. *See* Ex. B. Infringement Chart for Claim 14 of the ’116 Patent. *See* also
15 Ex. C-F. Infringement Charts.
16
17
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19

20 **COUNT 1:**

21 **INFRINGEMENT OF U.S. PATENT U.S. Patent 7,159,116 B2**

22 23. Blue Spike incorporates by reference the paragraphs above and below.

23 24. The ’116 Patent is presumed valid, enforceable, and was duly and legally issued
24 by the United States Patent and Trademark Office.

25 25. These claims are directed to a non-abstract improvement over the prior art in
26 completing transactions in a trusted manner over the Internet (see Dkt. 1-2,
27
28

1 Summary of the Invention for the '116 Patent), rather than a method of organizing
2 human activity or an idea of itself. *See Aatrix Software, Inc. v. Green Shades Software,*
3 *Inc.*, 2017-1452 (Fed. Cir. Feb. 14, 2018).
4

5 26. The specification of the '116 Patent explains both the problem in the prior art
6 and the benefit of the computer-implemented invention. Dkt. 2 '116 Patent Col. 2:1-
7 8:35. This difference is not “well understood” or “conventional.” The patent
8 examiner allowed the claims given the 39 columns and 13 figures depicting the
9 teachings of the inventions including algorithms all provided in the specification.
10 *See* Dkt. 1-2. A human cannot perform these tasks nor could a human perform the
11 tasks of the prior art. *Id.* e.g. '116 Patent Col. 37:64-65. (“In one embodiment,
12 authentication device 1202 may include a display, such as an LCD screen.”); *see also*
13 Figures 1-13.
14
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16

17 27. Without a license or permission from Blue Spike, Defendant has infringed and
18 continues to infringe on one or more claims of the '116 Patent—directly,
19 contributorily, or by inducement—by importing, making, using, offering for sale, or
20 selling products and devices that embody the patented invention, including, without
21 limitation, one or more of the Accused Products and Services, in violation of 35
22 U.S.C. § 271.
23
24

25 **Direct Infringement.**
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1 28. Defendant makes, uses, offers for sale and sells in the U.S. the Accused Products
2 and Services which practice all the elements of the '116 Patent. For instance, the
3 Accused Products and Services infringe claim 14 of the '116 Patent which recites:
4

5
6 A device for conducting a trusted transaction between at
7 least two parties who have agreed to transact, comprising:
8 means for uniquely identifying information selected from
9 the group consisting of a unique identification of one of the
10 parties, a unique identification of the transaction, a unique
11 identification of value added information to be transacted, a
12 unique identification of a value adding component;
13 a steganographic cipher for generating said unique
14 identification information, wherein the steganographic
15 cipher is governed by at least the following elements: a
16 predetermined key, a predetermined message, and a
17 predetermined carrier signal; and
18 a means for verifying an agreement to transact between the
19 parties.
20

21 29. Defendant makes, uses, offers for sale and sells in the U.S. the Accused Products
22 and Services which institute trusted transactions between at least two parties,
23 Spotify and customer, who have agreed to transact and allow the customer to access,
24 download, and play music. Spotify utilizes the same elements (key, message, and
25 signal) as the Blue Spike steganographic cipher via a key system, content decryption
26 module, and a license key server. Ex. A, p. 3, “What is EME [,,] Web Fundamentals
27 [,,] Google Developers” forum page (Date Accessed 05/02/2018), available at
28 <https://developers.google.com/web/fundamentals/media/eme>. Spotify uses a key
system to embed information into audio content that causes Spotify’s website
accessed on a computer and its application running on Smart Phones, Tablets,

1 Streaming Devices and Smart Televisions, named “Spotify”, to contact the license
2 key server in order to receive licenses and/or keys required by the content
3 decryption module for decrypting and playing the audio content.
4

5 30. One way Defendant is illegally using Blue Spike’s technology by selling
6 monthly subscription plans for “high quality audio.” Dkt. 1-1 at 1. Ex. 1, Spotify
7 Webpage at <https://www.spotify.com/us/premium/?checkout=false> as seen on
8
9 7/23/2018.

10 31. Defendant performs quality control testing on its service by accessing its
11 website, Spotify.com, or its application running on Smart Phones, Tablets,
12 Streaming Devices and Smart Televisions, called “Spotify”, whereby Defendant
13 performs testing of a computer to conduct, among other communications like
14 establishing a “station” to perform secure transaction between its test computer and
15 its server whereby via software and/or firmware it uniquely identifies a piece of
16 information selected from the group including, but not limited to, a unique
17 identification of one of the parties, then Spotify’s software and/or firmware included
18 in or connected to a server, Spotify then uses a steganographic cipher for generating
19 unique identification information, wherein the steganographic cipher is governed by
20 a predetermined key, a predetermined message, and a predetermined carrier signal;
21 along with the method to verify the agreement to transact between the parties. *See*
22 *also*, Ex. B, Infringement Chart for claim 14 of the ’116 patent.
23
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28 **Indirect Infringement.**

1 32. Defendant has been and now is indirectly infringing by way of inducing
2 infringement by others and/or contributing to the infringement by others of the
3 '116 Patent in this State, in this judicial district, and elsewhere in the United States,
4 by, among other things, making, using, importing, offering for sale, and/or selling,
5 without license or authority, infringing services for use in systems that fall within
6 the scope of one or more claims of the '116 Patent. Such products include, without
7 limitation, one or more of the Accused Products and Services. By making, using,
8 importing offering for sale, and/or selling such, Defendant injured Blue Spike and is
9 thus liable to Blue Spike for infringement of the '116 Patent under 35 U.S.C. § 271.

10 33. Defendant actively induces infringement under Title 35 U.S.C. § 271(b).
11 Defendant performed actions that induced infringing acts that Defendant knew or
12 should have known would induce actual infringements. *See Manville Sales Corp. v.*
13 *Paramount Sys., Inc.*, 917 F.2d 544, 553 (Fed.Cir.1990), quoted in *DSU Med. Corp. v.*
14 *JMS Co.*, 471 F.3d 1293, 1306 (Fed.Cir.2006) (en banc in relevant part). “[A] finding
15 of inducement requires a threshold finding of direct infringement—either a finding
16 of specific instances of direct infringement or a finding that the accused products
17 necessarily infringe.” *Ricoh*, 550 F.3d at 1341 (citing *ACCO Brands, Inc. v. ABA Locks*
18 *Manufacturer Co.*, 501 F.3d 1307, 1313, (Fed. Cir. 2007).

19 34. Plaintiff will rely on direct and/or circumstantial evidence to prove the intent
20 element. *See Fuji Photo Film Co. v. Jazz Photo Corp.*, 394 F.3d 1368, 1377 (Fed. Cir.
21 2005) (“A patentee may prove intent through circumstantial evidence.”); *Water*

1 *Techs. Corp. v. Calco, Ltd.*, 850 F.2d 660, 668 (Fed. Cir. 1988) (“While proof of intent
2 is necessary, direct evidence is not required; rather, circumstantial evidence may
3 suffice.”).

4
5 35. Defendant took active steps to induce infringement, such as advertising an
6 infringing use, which supports a finding of an intention for the accused product to
7 be used in an infringing manner. *See Metro-Goldwyn-Mayer Studios Inc. v. Grokster,*
8 *Ltd.*, 545 U.S. 913, 932, 125 S. Ct. 2764, 162 L. Ed. 2d 781 (2005) (explaining that
9 the contributory infringement doctrine “was devised to identify instances in which it
10 may be presumed from distribution of an article in commerce that the distributor
11 intended the article to be used to infringe another’s patent, and so may justly be
12 held liable for that infringement”).

13
14
15
16 36. It is not necessary for Plaintiff to indicate specific customers directly infringing
17 the Patents-in-Suit through the use of Defendant’s products and services. *See In re*
18 *Bill of Lading Transmission and Processing System Pat. Litig.*, 681 F.3d 1323, 1336
19 (Fed. Cir. 2012).

20
21 **Induced Infringement.**

22
23 37. Defendant induces infringement of its customers, who use the infringing
24 functionality, and its partners and resellers, who offer for sale and sell the Accused
25 Products and Services.

1 38. Defendant induces end users of the Accused Products and Services to infringe.
2 Defendant induces its customers to infringe at the very least by providing
3 information on how to access the Internet via its router system.
4

5 39. Defendant also provides customers other incentives to use the infringing
6 services, such as premium services. *See* Exhibit 1; *see Power Integrations v.*
7 *Semiconductor*, 843 F.3d at 1335 (“[W]e have affirmed induced infringement
8 verdicts based on circumstantial evidence of inducement (e.g., advertisements, user
9 manuals) directed to a class of direct infringers (e.g., customers, end users) without
10 requiring hard proof that any individual third-party direct infringer was actually
11 persuaded to infringe by that material.”).
12

13
14 40. Defendant had knowledge of the ’116 Patent at least as early as the service of
15 this complaint, and has known since then that the Accused Products and Services
16 infringe the Patents-in-Suit. Nevertheless, Defendant has continued to induce its
17 customers and partners to infringe. It does so through its instructions
18 accompanying the Accused Products and Services, its technical support,
19 demonstrations and tutorials. Thus, Defendant is liable for infringement of one or
20 more claims of the ’116 Patent by actively inducing infringement.
21
22

23
24 41. The Ninth Circuit has rejected the notion that a plaintiff must allege the facts
25 from which knowledge is to be inferred. *In re GlenFed, Inc. Sec. Litig.*, 42 F.3d 1541,
26 1545–47 (9th Cir. 1994), *superseded by statute on other grounds as recognized in Ronconi*
27 *v. Larkin*, 253 F.3d 423, 429 n.6 (9th Cir. 2001). Rather, it is sufficient to allege
28

1 knowledge or intent “generally, just as the rule states—that is, simply by saying
2 that [it] existed.” *Id.* at 1547.

3 **Contributory Infringement.**

4
5 42. Defendant is also a contributory infringer. In addition to proving an act of
6 direct infringement, plaintiff contends that defendant knew that the combination for
7 which its components were especially made was both patented and infringing.
8

9 43. The contributory infringement doctrine was devised to identify instances in
10 which it may be presumed from distribution of an article in commerce that the
11 distributor intended the article to be used to infringe another’s patent, and so may
12 justly be held liable for that infringement. *See Metro-Goldwyn-Mayer Studios Inc. v.*
13 *Grokster, Ltd.*, 545 U.S. 913, 932, 125 S. Ct. 2764, 162 L. Ed. 2d 781(2005).
14

15
16 44. Defendant contributed to the infringement by providing the Accused Products
17 and Services to its customers, partners and resellers.

18
19 45. The accused functionality in the Accused Products and Services has no
20 substantial non-infringing uses. *See, e.g., Lucent Techs., Inc. v. Gateway, Inc.*, 580 F. 3d
21 1301 (Fed. Cir. 2009) (holding that the substantial non-infringing uses element of a
22 contributory infringement claim applies to an infringing feature or component). An
23 “infringing feature” of a product does not escape liability simply because the product
24 as a whole has other non-infringing uses. *See Id.* at 1321.
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1 **Plaintiff Suffered Damages.**

2 46. Defendant’s acts of infringement of the ’116 Patent have caused damage to Blue
3 Spike, and Blue Spike is entitled to recover from Defendant the damages sustained
4 as a result of Defendant’s wrongful acts in an amount described in the prayer below.
5 Defendant’s infringement of Blue Spike’s exclusive rights under the ’116 Patent will
6 continue to damage Blue Spike, causing it irreparable harm, for which there is no
7 adequate remedy at law, warranting an injunction from the Court.
8

9
10 47. On information and belief, the infringement of the ’116 Patent by Defendant has
11 been willful and continues to be willful. Defendant had knowledge of the ’116
12 Patent, including but not limited to at least one or more of the following events:

- 13 a. The filing of Blue Spike’s complaint against Defendant.
- 14 b. In the course of its due diligence and freedom to operate analyses.
- 15 c. News coverage of Blue Spike’s enforcement of this patent against other
16 infringers.
- 17 d. Part of the due diligence investigation performed for SEC filings.

18
19
20 48. On information and belief, Defendant has had at least had constructive notice of
21 the ’116 Patent by operation of law. Plaintiff believes the evidence provided shows
22 Defendant’s willful infringement is egregious. Even so, Plaintiff is not required to
23 prove egregiousness in its pleadings. “Even after Halo, broader allegations of
24 willfulness, without a specific showing of egregiousness, are sufficient to withstand
25 a motion to dismiss.” *Shire ViroPharma Inc. v. CSL Behring LLC*, CV 17-414, 2018
26
27
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1 WL 326406, at *3 (D. Del. Jan. 8, 2018) (denying a defendant’s motion to dismiss
2 and noting “Defendants’ argument seems to conflate the standards for pleading
3 willful infringement with the standards for proving willful infringement.”).

4
5 49. A jury is capable, and indeed required, to examine facts that plausibly support a
6 finding of willful infringement. Here, the facts provide “a sufficient predicate” to
7 support a jury’s finding of willfulness. *See Barry v. Medtronic, Inc.*, 250 F. Supp. 3d
8 107, 111 (E.D. Tex. 2017) (listing a series of nine-factors utilized in the Federal
9 Circuit, including whether the infringer knew of the other’s patent protection and
10 investigated, the infringers behavior, defendant’s size and financial condition,
11 closeness of the case, duration of misconduct, and remedial action taken by
12 defendant once it was notified of infringement, as factors that are “a sufficient
13 predicate” of fact to support a jury’s finding of willfulness).

14
15
16
17 50. The Ninth Circuit has rejected the notion that a plaintiff must allege the facts
18 from which knowledge is to be inferred. *In re GlenFed, Inc. Sec. Litig.*, 42 F.3d 1541,
19 1545–47 (9th Cir. 1994), *superseded by statute on other grounds as recognized in Ronconi*
20 *v. Larkin*, 253 F.3d 423, 429 n.6 (9th Cir. 2001). Rather, it is sufficient to allege
21 knowledge or intent “generally, just as the rule states—that is, simply by saying
22 that [it] existed.” *Id.* at 1547.
23
24

25 **COUNT 2:**

26 **INFRINGEMENT OF U.S. PATENT US Patent 8,538,011 B2**

27 51. Blue Spike incorporates by reference the paragraphs above and below.
28

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1 52. The '011 Patent is presumed valid, enforceable, and was duly and legally issued
2 by the United States Patent and Trademark Office.

3 53. These claims are directed to a non-abstract improvement in computer
4 functionality, rather than a method of organizing human activity or an idea of itself.
5
6 *See Aatrix Software, Inc. v. Green Shades Software, Inc.*, 2017-1452 (Fed. Cir. Feb. 14,
7 2018).
8

9 54. The specification of the '011 Patent explains both the problem in the prior art
10 and the benefit of the computer-implemented invention. Dkt 1-3, the '011 Patent,
11 Col. 2:1-8:26. This difference is not “well understood” or “conventional.” A human
12 cannot perform these tasks nor could a human perform the tasks of the prior art. *Id.*
13 at '011 Patent, Col. 18:16-35 (Describes the complexity of how a human could not
14 generate or decipher passwords with the efficiency the patented technology can
15 generate and decipher encrypted codes.)
16
17

18 55. Without a license or permission from Blue Spike, Defendant has infringed and
19 continues to infringe on one or more claims of the '011 Patent—directly,
20 contributorily, or by inducement—by importing, making, using, offering for sale, or
21 selling products and devices that embody the patented invention, including, without
22 limitation, one or more of the Accused Products and Services, in violation of 35
23 U.S.C. § 271.
24
25

26 **Direct Infringement.**
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GARTEISER HONEA – TRIAL ATTORNEYS

1 56. Defendant makes, uses, offers for sale and sells in the U.S. the Accused Products
2 and Services which practice all the elements of the '011 Patent. For instance, the
3 Accused Products and Services infringe claim 35 of the '011 Patent which recites:
4

5 A device for conducting trusted transactions between at
6 least two parties, comprising:
7 a steganographic cipher;
8 a controller for receiving input data or outputting output
9 data; and
10 at least one input/output connection,
11 wherein the device has a device identification code stored in
12 the device;
13 an analog to digital converter; and
14 a steganographically ciphered software application;
15 wherein said steganographically ciphered software
16 application has been subject to a steganographic cipher for
17 serialization;
18 wherein said steganographic cipher receives said output
19 data, steganographically ciphering said output data using a
20 key, to define steganographically ciphered output data, and
21 transmits said steganographically ciphered output data to
22 said at least one input/output connection;
23 wherein the device is configured to steganographically
24 cipher both value-added information and at least one value-
25 added component associated with the value-added
26 information.
27
28

57. Defendant makes, uses, offers for sale and sells in the U.S. the Accused Products
and Services which institute trusted transactions between at least two parties,
Spotify and customer, who have agreed to transact and allow the customer to access,
download, and play music. Spotify utilizes the same elements (key, message, and
signal) as the Blue Spike steganographic cipher via a key system, content decryption
module, and a license key server. Ex. A, p. 3, "What is EME [,,] Web Fundamentals

1 [,] Google Developers” forum page (Date Accessed 05/02/2018), available at
2 <https://developers.google.com/web/fundamentals/media/eme>. Spotify uses a key
3 system to embed information into audio content that causes Spotify’s website
4 accessed on a computer and its applications running on Smart Phones, Tablets,
5 Streaming Devices and Smart Televisions, named “Spotify”, to contact the license
6 key server in order to receive licenses and/or keys required by the content
7 decryption module for decrypting and playing the audio content.
8
9

10 58. One way Defendant is illegally using Blue Spike’s technology is by selling
11 monthly subscription plans for “high quality audio.” Ex. 1, Spotify Premium
12 Webpage at <https://www.spotify.com/us/premium/?checkout=false> as seen on
13 7/23/2018.
14

15
16 59. Defendant directly infringes by, among other ways, performing quality control
17 testing whereby Defendant its Accused Device and/or System for conducting a
18 secure transaction between at its test computer and its server to perform an agreed
19 transaction. Defendant uses uniquely identifying information to set about a
20 steganographic cipher governed by a predetermined key, a predetermined message,
21 and a predetermined carrier signal. Spotify also verifies there exists an agreement to
22 transact in the first place, e.g. user name and password. *See e.g.* Ex. C, Infringement
23 Chart for claim 35 of the ’011 Patent.
24
25

26 **Indirect Infringement.**
27
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1 60. Defendant has been and now is indirectly infringing by way of inducing
2 infringement by others and/or contributing to the infringement by others of the
3 '011 Patent in this State, in this judicial district, and elsewhere in the United States,
4 by, among other things, making, using, importing, offering for sale, and/or selling,
5 without license or authority, infringing services for use in systems that fall within
6 the scope of one or more claims of the '011 Patent. Such products include, without
7 limitation, one or more of the Accused Products and Services. By making, using,
8 importing offering for sale, and/or selling such, Defendant injured Blue Spike and is
9 thus liable to Blue Spike for infringement of the '011 Patent under 35 U.S.C. § 271.

10 61. Defendant actively induces infringement under Title 35 U.S.C. § 271(b).
11 Defendant performed actions that induced infringing acts that Defendant knew or
12 should have known would induce actual infringements. *See Manville Sales Corp. v.*
13 *Paramount Sys., Inc.*, 917 F.2d 544, 553 (Fed.Cir.1990), quoted in *DSU Med. Corp. v.*
14 *JMS Co.*, 471 F.3d 1293, 1306 (Fed.Cir.2006) (en banc in relevant part). “[A] finding
15 of inducement requires a threshold finding of direct infringement—either a finding
16 of specific instances of direct infringement or a finding that the accused products
17 necessarily infringe.” *Ricoh*, 550 F.3d at 1341 (citing *ACCO Brands, Inc. v. ABA Locks*
18 *Manufacturer Co.*, 501 F.3d 1307, 1313, (Fed. Cir. 2007).

19 62. Plaintiff will rely on direct and/or circumstantial evidence to prove the intent
20 element. *See Fuji Photo Film Co. v. Jazz Photo Corp.*, 394 F.3d 1368, 1377 (Fed. Cir.
21 2005) (“A patentee may prove intent through circumstantial evidence.”); *Water*

1 *Techs. Corp. v. Calco, Ltd.*, 850 F.2d 660, 668 (Fed. Cir. 1988) (“While proof of intent
2 is necessary, direct evidence is not required; rather, circumstantial evidence may
3 suffice.”).

4
5 63. Defendant took active steps to induce infringement, such as advertising an
6 infringing use, which supports a finding of an intention for the accused product to
7 be used in an infringing manner. *See Metro-Goldwyn-Mayer Studios Inc. v. Grokster,*
8 *Ltd.*, 545 U.S. 913, 932, 125 S. Ct. 2764, 162 L. Ed. 2d 781 (2005) (explaining that
9 the contributory infringement doctrine “was devised to identify instances in which it
10 may be presumed from distribution of an article in commerce that the distributor
11 intended the article to be used to infringe another’s patent, and so may justly be
12 held liable for that infringement”).

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14
15
16 64. It is not necessary for Plaintiff to indicate specific customers directly infringing
17 the Patents-in-Suit through the use of Defendant’s products and services. *See In re*
18 *Bill of Lading Transmission and Processing System Pat. Litig.*, 681 F.3d 1323, 1336
19 (Fed. Cir. 2012).

20
21 **Induced Infringement.**

22
23 65. Defendant induces infringement of its customers, who use the infringing
24 functionality, and its partners and resellers, who offer for sale and sell the Accused
25 Products and Services.

1 66. Defendant induces end users of the Accused Products and Services to infringe.
2 Defendant induces its customers to infringe at the very least by providing
3 information on how to access the Internet via its router system.
4

5 67. Defendant also provides customers other incentives to use the infringing
6 services, such as premium services. *See* Exhibit 1; *see Power Integrations v. Fairchild*
7 *Semiconductor*, 843 F.3d at 1335 (“[W]e have affirmed induced infringement
8 verdicts based on circumstantial evidence of inducement (e.g., advertisements, user
9 manuals) directed to a class of direct infringers (e.g., customers, end users) without
10 requiring hard proof that any individual third-party direct infringer was actually
11 persuaded to infringe by that material.”).
12

13
14 68. Defendant had knowledge of the '011 Patent at least as early as the service of
15 this complaint, and has known since then that the Accused Products and Services
16 infringe the Patents-in-Suit. Nevertheless, Defendant has continued to induce its
17 customers and partners to infringe. It does so through its instructions
18 accompanying the Accused Products and Services, its technical support,
19 demonstrations and tutorials. Thus, Defendant is liable for infringement of one or
20 more claims of the '011 Patent by actively inducing infringement.
21
22

23
24 69. The Ninth Circuit has rejected the notion that a plaintiff must allege the facts
25 from which knowledge is to be inferred. *In re GlenFed, Inc. Sec. Litig.*, 42 F.3d 1541,
26 1545–47 (9th Cir. 1994), *superseded by statute on other grounds as recognized in Ronconi*
27 *v. Larkin*, 253 F.3d 423, 429 n.6 (9th Cir. 2001). Rather, it is sufficient to allege
28

1 knowledge or intent “generally, just as the rule states—that is, simply by saying
2 that [it] existed.” *Id.* at 1547.

3 **Contributory Infringement.**
4

5 70. Defendant is also a contributory infringer. In addition to proving an act of
6 direct infringement, plaintiff contends that defendant knew that the combination for
7 which its components were especially made was both patented and infringing.
8

9 71. The contributory infringement doctrine was devised to identify instances in
10 which it may be presumed from distribution of an article in commerce that the
11 distributor intended the article to be used to infringe another’s patent, and so may
12 justly be held liable for that infringement. *See Metro-Goldwyn-Mayer Studios Inc. v.*
13 *Grokster, Ltd.*, 545 U.S. 913, 932, 125 S. Ct. 2764, 162 L. Ed. 2d 781(2005).
14

15 72. Defendant contributed to the infringement by providing the Accused Products
16 and Services to its customers, partners and resellers.
17

18 73. The accused functionality in the Accused Products and Services has no
19 substantial non-infringing uses. *See, e.g., Lucent Techs., Inc. v. Gateway, Inc.*, 580 F. 3d
20 1301 (Fed. Cir. 2009) (holding that the substantial non-infringing uses element of a
21 contributory infringement claim applies to an infringing feature or component). An
22 “infringing feature” of a product does not escape liability simply because the product
23 as a whole has other non-infringing uses. *See Id.* at 1321.
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GARTEISER HONEA – TRIAL ATTORNEYS

1 **Plaintiff Suffered Damages.**

2 74. Defendant’s acts of infringement of the ’011 Patent have caused damage to Blue
3 Spike, and Blue Spike is entitled to recover from Defendant the damages sustained
4 as a result of Defendant’s wrongful acts in an amount described in the prayer below.
5 Defendant’s infringement of Blue Spike’s exclusive rights under the ’011 Patent will
6 continue to damage Blue Spike, causing it irreparable harm, for which there is no
7 adequate remedy at law, warranting an injunction from the Court.
8

9
10 75. On information and belief, the infringement of the ’011 Patent by Defendant has
11 been willful and continues to be willful. Defendant had knowledge of the ’011
12 Patent, including but not limited to at least one or more of the following events:

- 13 a. The filing of Blue Spike’s complaint against Defendant.
- 14 b. In the course of its due diligence and freedom to operate analyses.
- 15 c. News coverage of Blue Spike’s enforcement of this patent against other
16 infringers.
- 17 d. Part of the due diligence investigation performed for SEC filings.

18
19
20
21 76. On information and belief, Defendant has had at least had constructive notice of
22 the ’011 Patent by operation of law. Plaintiff believes the evidence provided shows
23 Defendant’s willful infringement is egregious. Even so, Plaintiff is not required to
24 prove egregiousness in its pleadings. “Even after Halo, broader allegations of
25 willfulness, without a specific showing of egregiousness, are sufficient to withstand
26 a motion to dismiss.” *Shire ViroPharma Inc. v. CSL Behring LLC*, CV 17-414, 2018
27
28

1 WL 326406, at *3 (D. Del. Jan. 8, 2018) (denying a defendant’s motion to dismiss
2 and noting “Defendants’ argument seems to conflate the standards for pleading
3 willful infringement with the standards for proving willful infringement.”).

4
5 77. A jury is capable, and indeed required, to examine facts that plausibly support a
6 finding of willful infringement. Here, the facts provide “a sufficient predicate” to
7 support a jury’s finding of willfulness. *See Barry v. Medtronic, Inc.*, 250 F. Supp. 3d
8 107, 111 (E.D. Tex. 2017) (listing a series of nine-factors utilized in the Federal
9 Circuit, including whether the infringer knew of the other’s patent protection and
10 investigated, the infringers behavior, defendant’s size and financial condition,
11 closeness of the case, duration of misconduct, and remedial action taken by
12 defendant once it was notified of infringement, as factors that are “a sufficient
13 predicate” of fact to support a jury’s finding of willfulness).

14
15
16
17 78. The Ninth Circuit has rejected the notion that a plaintiff must allege the facts
18 from which knowledge is to be inferred. *In re GlenFed, Inc. Sec. Litig.*, 42 F.3d 1541,
19 1545–47 (9th Cir. 1994), *superseded by statute on other grounds as recognized in Ronconi*
20 *v. Larkin*, 253 F.3d 423, 429 n.6 (9th Cir. 2001). Rather, it is sufficient to allege
21 knowledge or intent “generally, just as the rule states—that is, simply by saying
22 that [it] existed.” *Id.* at 1547.
23
24

25 **COUNT 3:**

26 **INFRINGEMENT OF U.S. PATENT NO. 7,813,506 B2**

27 79. Blue Spike incorporates by reference the paragraphs above and below.
28

GARTEISER HONEA – TRIAL ATTORNEYS

1 80. The '506 Patent is presumed valid, enforceable, and was duly and legally issued
2 by the United States Patent and Trademark Office.

3 81. These claims are directed to a non-abstract improvement in computer
4 functionality, rather than a method of organizing human activity or an idea of itself.
5 *See Aatrix Software, Inc. v. Green Shades Software, Inc.*, 2017-1452 (Fed. Cir. Feb. 14,
6 2018).
7
8

9 82. The specification of the '506 Patent explains both the problem in the prior art
10 and the benefit of the computer-implemented invention. Dkt. 1-4, '506 Patent, Col.
11 2:15-4:13. The patent examiner allowed the claims given the 18 columns and 5
12 figures depicting the teachings of the invention including algorithms all provided in
13 the specification. *See* Dkt. 1-4. This difference is not “well-understood” or
14 “conventional.” A human cannot perform these tasks.
15
16

17 83. Without a license or permission from Blue Spike, Defendant has infringed and
18 continues to infringe on one or more claims of the '506 Patent—directly,
19 contributorily, or by inducement—by importing, making, using, offering for sale, or
20 selling products and devices that embody the patented invention, including, without
21 limitation, one or more of the Accused Products and Services, in violation of 35
22 U.S.C. § 271.
23
24

25 **Direct Infringement.**
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GARTEISER HONEA – TRIAL ATTORNEYS

1 84. Defendant makes, uses, offers for sale and sells in the U.S. the Accused Products
2 and Services which practice all the elements of the '506 Patent. For instance, the
3 Accused Products and Services infringe claim 6 of the '506 Patent which recites:

4
5 A method for distributing accessible digital content,
6 comprising:

7 providing a digital content comprising digital data and file
8 format information;

9 selecting a scrambling technique to apply to the digital
10 content;

11 scrambling the digital content using a predetermined key
12 resulting in perceptibly degraded digital content wherein
13 the scrambling technique is based on a plurality of
14 predetermined criteria including at least the criteria of
15 reaching a desired signal quality level for the digital
16 content; and

17 distributing the scrambled digital content.

18 85. Defendant makes, uses, offers for sale and sells in the U.S. the Accused Products
19 and Services that distribute digital content, here audio and metadata information
20 about the audio, title, file format, artist, album and et cetera. Defendant applies to
21 the digital content an encryption and distortion technique based on criteria that
22 includes a specified quality level for the transmission of the digital content.

23 86. One way Defendant is illegally using Blue Spike's technology is by selling
24 monthly subscription plans for "high quality audio." Ex. 1, Spotify Premium
25 Webpage at <https://www.spotify.com/us/premium/?checkout=false> as seen on
26 7/23/2018.
27
28

1 87. Defendant directly infringes by performing quality control testing whereby it
2 accesses its website via a computer to receive scrambled digital content at a specified
3 quality level, whereby the digital content contains file format and digital data, and
4 at the test computer may be then un-scrambled through the use of a predetermined
5 key. See e.g. Ex. D, Infringement Chart for Claim 6 of the '506 Patent.
6

7
8 **Indirect Infringement.**

9 88. Defendant has been and now is indirectly infringing by way of inducing
10 infringement by others and/or contributing to the infringement by others of the
11 '506 Patent in this State, in this judicial district, and elsewhere in the United States,
12 by, among other things, making, using, importing, offering for sale, and/or selling,
13 without license or authority, infringing services for use in systems that fall within
14 the scope of one or more claims of the '506 Patent. Such products include, without
15 limitation, one or more of the Accused Products and Services. By making, using,
16 importing offering for sale, and/or selling such, Defendant injured Blue Spike and is
17 thus liable to Blue Spike for infringement of the '011 Patent under 35 U.S.C. § 271.
18

19
20
21 89. Defendant actively induces infringement under Title 35 U.S.C. § 271(b).
22 Defendant performed actions that induced infringing acts that Defendant knew or
23 should have known would induce actual infringements. *See Manville Sales Corp. v.*
24 *Paramount Sys., Inc.*, 917 F.2d 544, 553 (Fed.Cir.1990), quoted in *DSU Med. Corp. v.*
25 *JMS Co.*, 471 F.3d 1293, 1306 (Fed.Cir.2006) (en banc in relevant part). “[A] finding
26 of inducement requires a threshold finding of direct infringement—either a finding
27
28

1 of specific instances of direct infringement or a finding that the accused products
2 necessarily infringe.” *Ricoh*, 550 F.3d at 1341 (citing *ACCO Brands, Inc. v. ABA Locks*
3 *Manufacturer Co.*, 501 F.3d 1307, 1313, (Fed. Cir. 2007).

4
5 90. Plaintiff will rely on direct and/or circumstantial evidence to prove the intent
6 element. *See Fuji Photo Film Co. v. Jazx Photo Corp.*, 394 F.3d 1368, 1377 (Fed. Cir.
7 2005) (“A patentee may prove intent through circumstantial evidence.”); *Water*
8 *Techs. Corp. v. Calco, Ltd.*, 850 F.2d 660, 668 (Fed. Cir. 1988) (“While proof of intent
9 is necessary, direct evidence is not required; rather, circumstantial evidence may
10 suffice.”).

11
12
13 91. Defendant took active steps to induce infringement, such as advertising an
14 infringing use, which supports a finding of an intention for the accused product to
15 be used in an infringing manner. *See Metro-Goldwyn-Mayer Studios Inc. v. Grokster,*
16 *Ltd.*, 545 U.S. 913, 932, 125 S. Ct. 2764, 162 L. Ed. 2d 781 (2005) (explaining that
17 the contributory infringement doctrine “was devised to identify instances in which it
18 may be presumed from distribution of an article in commerce that the distributor
19 intended the article to be used to infringe another’s patent, and so may justly be
20 held liable for that infringement”).

21
22
23
24 92. It is not necessary for Plaintiff to indicate specific customers directly infringing
25 the Patents-in-Suit through the use of Defendant’s products and services. *See In re*
26 *Bill of Lading Transmission and Processing System Pat. Litig.*, 681 F.3d 1323, 1336
27 (Fed. Cir. 2012).
28

GARTEISER HONEA – TRIAL ATTORNEYS

1 **Induced Infringement.**

2 93. Defendant induces infringement of its customers, who use the infringing
3 functionality, and its partners and resellers, who offer for sale and sell the Accused
4 Products and Services.
5

6 94. Defendant induces end users of the Accused Products and Services to infringe.
7 Defendant induces its customers to infringe at the very least by providing
8 information on how to access the Internet via its router system.
9

10 95. Defendant also provides customers other incentives to use the infringing
11 services, such as premium services. *See* Exhibit 1; *see Power Integrations v. Fairchild*
12 *Semiconductor*, 843 F.3d at 1335 (“[W]e have affirmed induced infringement
13 verdicts based on circumstantial evidence of inducement (e.g., advertisements, user
14 manuals) directed to a class of direct infringers (e.g., customers, end users) without
15 requiring hard proof that any individual third-party direct infringer was actually
16 persuaded to infringe by that material.”).
17
18

19 96. Defendant had knowledge of the ’506 Patent at least as early as the service of
20 this complaint, and has known since then that the Accused Products and Services
21 infringe the Patents-in-Suit. Nevertheless, Defendant has continued to induce its
22 customers and partners to infringe. It does so through its instructions
23 accompanying the Accused Products and Services, its technical support,
24 demonstrations and tutorials. Thus, Defendant is liable for infringement of one or
25 more claims of the ’506 Patent by actively inducing infringement.
26
27
28

1 97. The Ninth Circuit has rejected the notion that a plaintiff must allege the facts
2 from which knowledge is to be inferred. *In re GlenFed, Inc. Sec. Litig.*, 42 F.3d 1541,
3 1545–47 (9th Cir. 1994), *superseded by statute on other grounds as recognized in Ronconi*
4 *v. Larkin*, 253 F.3d 423, 429 n.6 (9th Cir. 2001). Rather, it is sufficient to allege
5 knowledge or intent “generally, just as the rule states—that is, simply by saying
6 that [it] existed.” *Id.* at 1547.
7
8

9 **Contributory Infringement.**

10 98. Defendant is also a contributory infringer. In addition to proving an act of
11 direct infringement, plaintiff contends that defendant knew that the combination for
12 which its components were especially made was both patented and infringing.
13

14 99. The contributory infringement doctrine was devised to identify instances in
15 which it may be presumed from distribution of an article in commerce that the
16 distributor intended the article to be used to infringe another’s patent, and so may
17 justly be held liable for that infringement. *See Metro-Goldwyn-Mayer Studios Inc. v.*
18 *Grokster, Ltd.*, 545 U.S. 913, 932, 125 S. Ct. 2764, 162 L. Ed. 2d 781(2005).
19
20

21 100. Defendant contributed to the infringement by providing the Accused Products
22 and Services to its customers, partners and resellers.
23

24 101. The accused functionality in the Accused Products and Services has no
25 substantial non-infringing uses. *See, e.g., Lucent Techs., Inc. v. Gateway, Inc.*, 580 F. 3d
26 1301 (Fed. Cir. 2009) (holding that the substantial non-infringing uses element of a
27 contributory infringement claim applies to an infringing feature or component). An
28

GARTEISER HONEA – TRIAL ATTORNEYS

1 “infringing feature” of a product does not escape liability simply because the product
2 as a whole has other non-infringing uses. *See id.* at 1321.

3 **Plaintiff Suffered Damages.**

4
5 102. Defendant’s acts of infringement of the ’506 Patent have caused damage to
6 Blue Spike, and Blue Spike is entitled to recover from Defendant the damages
7 sustained as a result of Defendant’s wrongful acts in an amount described in the
8 prayer below. Defendant’s infringement of Blue Spike’s exclusive rights under the
9 ’506 Patent will continue to damage Blue Spike, causing it irreparable harm, for
10 which there is no adequate remedy at law, warranting an injunction from the Court.
11

12
13 103. On information and belief, the infringement of the ’506 Patent by Defendant
14 has been willful and continues to be willful. Defendant had knowledge of the ’506
15 Patent, including but not limited to at least one or more of the following events:
16

- 17 a. The filing of Blue Spike’s complaint against Defendant.
- 18 b. In the course of its due diligence and freedom to operate analyses.
- 19 c. News coverage of Blue Spike’s enforcement of this patent against other
20 infringers.
- 21 d. Part of the due diligence investigation performed for SEC filings.

22
23
24 104. On information and belief, Defendant has had at least had constructive notice
25 of the ’506 Patent by operation of law. Plaintiff believes the evidence provided
26 shows Defendant’s willful infringement is egregious. Even so, Plaintiff is not
27 required to prove egregiousness in its pleadings. “Even after Halo, broader
28

1 allegations of willfulness, without a specific showing of egregiousness, are sufficient
2 to withstand a motion to dismiss.” *Shire ViroPharma Inc. v. CSL Behring LLC*, CV
3 17-414, 2018 WL 326406, at *3 (D. Del. Jan. 8, 2018) (denying a defendant’s motion
4 to dismiss and noting “Defendants’ argument seems to conflate the standards for
5 pleading willful infringement with the standards for proving willful infringement.”).

6
7
8 105. A jury is capable, and indeed required, to examine facts that plausibly support
9 a finding of willful infringement. Here, the facts provide “a sufficient predicate” to
10 support a jury’s finding of willfulness. *See Barry v. Medtronic, Inc.*, 250 F. Supp. 3d
11 107, 111 (E.D. Tex. 2017) (listing a series of nine-factors utilized in the Federal
12 Circuit, including whether the infringer knew of the other’s patent protection and
13 investigated, the infringers behavior, defendant’s size and financial condition,
14 closeness of the case, duration of misconduct, and remedial action taken by
15 defendant once it was notified of infringement, as factors that are “a sufficient
16 predicate” of fact to support a jury’s finding of willfulness).

17
18
19
20 106. The Ninth Circuit has rejected the notion that a plaintiff must allege the facts
21 from which knowledge is to be inferred. *In re GlenFed, Inc. Sec. Litig.*, 42 F.3d 1541,
22 1545–47 (9th Cir. 1994), *superseded by statute on other grounds as recognized in Ronconi*
23 *v. Larkin*, 253 F.3d 423, 429 n.6 (9th Cir. 2001). Rather, it is sufficient to allege
24 knowledge or intent “generally, just as the rule states—that is, simply by saying
25 that [it] existed.” *Id.* at 1547.
26
27
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**COUNT 4:
INFRINGEMENT OF U.S. PATENT 7,664,263 B2**

107. Blue Spike incorporates by reference the paragraphs above and below.

108. The '263 Patent is presumed valid, enforceable, and was duly and legally issued by the United States Patent and Trademark Office.

109. These claims are directed to a non-abstract improvement in computer functionality, rather than a method of organizing human activity or an idea of itself. *See Aatrix Software, Inc. v. Green Shades Software, Inc.*, 2017-1452 (Fed. Cir. Feb. 14, 2018).

110. The specification of the '263 Patent explains both the problem in the prior art and the benefit of the computer-implemented invention. This difference is not “well understood” or “conventional.” A human cannot perform these tasks.

111. Without a license or permission from Blue Spike, Defendant has infringed and continues to infringe on one or more claims of the '263 Patent—directly, contributorily, or by inducement—by importing, making, using, offering for sale, or selling products and devices that embody the patented invention, including, without limitation, one or more of the Accused Products and Services, in violation of 35 U.S.C. § 271.

Direct Infringement.

112. Defendant makes, uses, offers for sale and sells in the U.S. the Accused Products and Services which practice all the elements of the '263 Patent. For

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1 instance, the Accused Products and Services infringe claim 1 of the '263 Patent
2 which recites:

3 A method for protecting a digital signal, comprising the
4 steps of:
5 providing a digital signal comprising digital data and file
6 format information defining how the digital signal is
7 encoded;
8 creating a predetermined key to manipulate the digital
9 signal wherein the predetermined key comprises a plurality
10 of mask sets; and
11 manipulating the digital signal using the predetermined key
12 to generate at least one permutation of the digital signal
13 parameterized by the file format information defining how
14 the digital signal is encoded.

15 113. Defendant makes, uses, offers for sale and sells in the U.S. a service that
16 infringes this patented method. Specifically, Defendant directly infringes by
17 conducting quality testing of its website and its application running on Smart
18 Phones, Tablets, Streaming Devices and Smart Televisions, called "Spotify." In
19 doing so, Defendant sends a protected signal from its software and/or firmware that
20 creates a key with a plurality of mask sets, to manipulate a digital signal to generate
21 at least one permutation of the digital signal parameterized by included file format
22 information contained within the sent digital content. See e.g. Ex. E, Infringement
23 Chart for claim 1 of the '263 Patent.

24 One way the Defendant is illegally using Blue Spike's technology is by selling
25 monthly subscription plans for "high quality audio." Ex. 1, Spotify Premium
26
27
28

1 Webpage at <https://www.spotify.com/us/premium/?checkout=false> as seen on
2 7/18/2018.

3 **Indirect Infringement.**

4
5 114. Defendant has been and now is indirectly infringing by way of inducing
6 infringement by others and/or contributing to the infringement by others of the
7 '263 Patent in this State, in this judicial district, and elsewhere in the United States,
8 by, among other things, making, using, importing, offering for sale, and/or selling,
9 without license or authority, infringing services for use in systems that fall within
10 the scope of one or more claims of the '263 Patent. Such products include, without
11 limitation, one or more of the Accused Products and Services. By making, using,
12 importing offering for sale, and/or selling such, Defendant injured Blue Spike and is
13 thus liable to Blue Spike for infringement of the '011 Patent under 35 U.S.C. § 271.

14
15
16
17 115. Defendant actively induces infringement under Title 35 U.S.C. § 271(b).
18 Defendant performed actions that induced infringing acts that Defendant knew or
19 should have known would induce actual infringements. *See Manville Sales Corp. v.*
20 *Paramount Sys., Inc.*, 917 F.2d 544, 553 (Fed.Cir.1990), quoted in *DSU Med. Corp. v.*
21 *JMS Co.*, 471 F.3d 1293, 1306 (Fed.Cir.2006) (en banc in relevant part). “[A] finding
22 of inducement requires a threshold finding of direct infringement—either a finding
23 of specific instances of direct infringement or a finding that the accused products
24 necessarily infringe.” *Ricoh*, 550 F.3d at 1341 (citing *ACCO Brands, Inc. v. ABA Locks*
25 *Manufacturer Co.*, 501 F.3d 1307, 1313, (Fed. Cir. 2007).
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1 116. Plaintiff will rely on direct and/or circumstantial evidence to prove the intent
2 element. *See Fuji Photo Film Co. v. Jazs Photo Corp.*, 394 F.3d 1368, 1377 (Fed. Cir.
3 2005) (“A patentee may prove intent through circumstantial evidence.”); *Water*
4 *Techs. Corp. v. Calco, Ltd.*, 850 F.2d 660, 668 (Fed. Cir. 1988) (“While proof of intent
5 is necessary, direct evidence is not required; rather, circumstantial evidence may
6 suffice.”).

9 117. Defendant took active steps to induce infringement, such as advertising an
10 infringing use, which supports a finding of an intention for the accused product to
11 be used in an infringing manner. *See Metro-Goldwyn-Mayer Studios Inc. v. Grokster,*
12 *Ltd.*, 545 U.S. 913, 932, 125 S. Ct. 2764, 162 L. Ed. 2d 781 (2005) (explaining that
13 the contributory infringement doctrine “was devised to identify instances in which it
14 may be presumed from distribution of an article in commerce that the distributor
15 intended the article to be used to infringe another’s patent, and so may justly be
16 held liable for that infringement”).

19 118. It is not necessary for Plaintiff to indicate specific customers directly
20 infringing the Patents-in-Suit through the use of Defendant’s products and services.
21 *See In re Bill of Lading Transmission and Processing System Pat. Litig.*, 681 F.3d 1323,
22 1336 (Fed. Cir. 2012).
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1 **Induced Infringement.**

2 119. Defendant induces infringement of its customers, who use the infringing
3 functionality, and its partners and resellers, who offer for sale and sell the Accused
4 Products and Services.
5

6 120. Defendant induces end users of the Accused Products and Services to infringe.
7 Defendant induces its customers to infringe at the very least by providing
8 information on how to access the Internet via its router system.
9

10 121. Defendant also provides customers other incentives to use the infringing
11 services, such as premium services. *See* Exhibit 1; *see Power Integrations v. Fairchild*
12 *Semiconductor*, 843 F.3d at 1335 (“[W]e have affirmed induced infringement
13 verdicts based on circumstantial evidence of inducement (e.g., advertisements, user
14 manuals) directed to a class of direct infringers (e.g., customers, end users) without
15 requiring hard proof that any individual third-party direct infringer was actually
16 persuaded to infringe by that material.”).
17
18

19 122. Defendant had knowledge of the ’263 Patent at least as early as the service of
20 this complaint, and has known since then that the Accused Products and Services
21 infringe the Patents-in-Suit. Nevertheless, Defendant has continued to induce its
22 customers and partners to infringe. It does so through its instructions
23 accompanying the Accused Products and Services, its technical support,
24 demonstrations and tutorials. Thus, Defendant is liable for infringement of one or
25 more claims of the ’263 Patent by actively inducing infringement.
26
27
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1 123. The Ninth Circuit has rejected the notion that a plaintiff must allege the facts
2 from which knowledge is to be inferred. *In re GlenFed, Inc. Sec. Litig.*, 42 F.3d 1541,
3 1545–47 (9th Cir. 1994), *superseded by statute on other grounds as recognized in Ronconi*
4 *v. Larkin*, 253 F.3d 423, 429 n.6 (9th Cir. 2001). Rather, it is sufficient to allege
5 knowledge or intent “generally, just as the rule states—that is, simply by saying
6 that [it] existed.” *Id.* at 1547.
7
8

9 **Contributory Infringement.**

10 124. Defendant is also a contributory infringer. In addition to proving an act of
11 direct infringement, plaintiff contends that defendant knew that the combination for
12 which its components were especially made was both patented and infringing.
13

14 125. The contributory infringement doctrine was devised to identify instances in
15 which it may be presumed from distribution of an article in commerce that the
16 distributor intended the article to be used to infringe another’s patent, and so may
17 justly be held liable for that infringement. *See Metro-Goldwyn-Mayer Studios Inc. v.*
18 *Grokster, Ltd.*, 545 U.S. 913, 932, 125 S. Ct. 2764, 162 L. Ed. 2d 781(2005).
19
20

21 126. Defendant contributed to the infringement by providing the Accused Products
22 and Services to its customers, partners and resellers.
23

24 127. The accused functionality in the Accused Products and Services has no
25 substantial non-infringing uses. *See, e.g., Lucent Techs., Inc. v. Gateway, Inc.*, 580 F. 3d
26 1301 (Fed. Cir. 2009) (holding that the substantial non-infringing uses element of a
27 contributory infringement claim applies to an infringing feature or component). An
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1 “infringing feature” of a product does not escape liability simply because the product
2 as a whole has other non-infringing uses. *See id.* at 1321.

3 **Plaintiff Suffered Damages.**

4
5 128. Defendant’s acts of infringement of the ’263 Patent have caused damage to
6 Blue Spike, and Blue Spike is entitled to recover from Defendant the damages
7 sustained as a result of Defendant’s wrongful acts in an amount described in the
8 prayer below. Defendant’s infringement of Blue Spike’s exclusive rights under the
9 ’263 Patent will continue to damage Blue Spike, causing it irreparable harm, for
10 which there is no adequate remedy at law, warranting an injunction from the Court.
11

12
13 129. On information and belief, the infringement of the ’263 Patent by Defendant
14 has been willful and continues to be willful. Defendant had knowledge of the ’263
15 Patent, including but not limited to at least one or more of the following events:
16

- 17 a. The filing of Blue Spike’s complaint against Defendant.
- 18 b. In the course of its due diligence and freedom to operate analyses.
- 19 c. News coverage of Blue Spike’s enforcement of this patent against other
20 infringers.
- 21 d. Part of the due diligence investigation performed for SEC filings.

22
23 130. On information and belief, Defendant has had at least had constructive notice
24 of the ’263 Patent by operation of law. Plaintiff believes the evidence provided
25 shows Defendant’s willful infringement is egregious. Even so, Plaintiff is not
26 required to prove egregiousness in its pleadings. “Even after Halo, broader
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1 allegations of willfulness, without a specific showing of egregiousness, are sufficient
2 to withstand a motion to dismiss.” *Shire ViroPharma Inc. v. CSL Behring LLC*, CV
3 17-414, 2018 WL 326406, at *3 (D. Del. Jan. 8, 2018) (denying a defendant’s motion
4 to dismiss and noting “Defendants’ argument seems to conflate the standards for
5 pleading willful infringement with the standards for proving willful infringement.”).

6
7
8 131. A jury is capable, and indeed required, to examine facts that plausibly support
9 a finding of willful infringement. Here, the facts provide “a sufficient predicate” to
10 support a jury’s finding of willfulness. *See Barry v. Medtronic, Inc.*, 250 F. Supp. 3d
11 107, 111 (E.D. Tex. 2017) (listing a series of nine-factors utilized in the Federal
12 Circuit, including whether the infringer knew of the other’s patent protection and
13 investigated, the infringers behavior, defendant’s size and financial condition,
14 closeness of the case, duration of misconduct, and remedial action taken by
15 defendant once it was notified of infringement, as factors that are “a sufficient
16 predicate” of fact to support a jury’s finding of willfulness).

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20 132. The Ninth Circuit has rejected the notion that a plaintiff must allege the facts
21 from which knowledge is to be inferred. *In re GlenFed, Inc. Sec. Litig.*, 42 F.3d 1541,
22 1545–47 (9th Cir. 1994), *superseded by statute on other grounds as recognized in Ronconi*
23 *v. Larkin*, 253 F.3d 423, 429 n.6 (9th Cir. 2001). Rather, it is sufficient to allege
24 knowledge or intent “generally, just as the rule states—that is, simply by saying
25 that [it] existed.” *Id.* at 1547.
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**COUNT 5:
INFRINGEMENT OF U.S. PATENT U.S. PATENT 8,265,276 B2**

133. Blue Spike incorporates by reference the paragraphs above and below.

134. The '276 Patent is presumed valid, enforceable, and was duly and legally issued by the United States Patent and Trademark Office.

135. These claims are directed to a non-abstract improvement in computer functionality, rather than a method of organizing human activity or an idea of itself. *See Aatrix Software, Inc. v. Green Shades Software, Inc.*, 2017-1452 (Fed. Cir. Feb. 14, 2018).

136. The specification of the '276 Patent explains both the problem in the prior art and the benefit of the computer-implemented invention. This difference is not “well understood” or “conventional.” A human cannot perform these tasks.

137. Without a license or permission from Blue Spike, Defendant has infringed and continues to infringe on one or more claims of the '276 Patent—directly, contributorily, or by inducement—by importing, making, using, offering for sale, or selling products and devices that embody the patented invention, including, without limitation, one or more of the Accused Products and Services, in violation of 35 U.S.C. § 271.

Direct Infringement.

138. Defendant makes, uses, offers for sale and sells in the U.S. the Accused Products and Services which practice all the elements of the '276 Patent. For

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1 instance, the Accused Products and Services infringe claim 1 of the '276 Patent
2 which recites:

3 A method for protecting a digital signal, comprising the
4 steps of:
5 providing a digital signal comprising digital data and file
6 format information defining how the digital signal is
7 encoded;
8 creating a predetermined key to manipulate the digital
9 signal;
10 manipulating the digital signal using the predetermined key
11 to generate at least one permutation of the digital signal
12 parameterized by the file format information defining how
13 the digital signal is encoded;
14 wherein the predetermined key comprises one or more mask
sets having random or pseudo-random series of bits; and
validating the one or more mask sets either before or after
manipulating the file format information using the
predetermined key.

15 139. Defendant makes, uses, offers for sale and sells in the U.S. the Accused
16 Products and Services which institute transactions between at least two parties,
17 Spotify and customer, who have agreed to transact and allow the customer to access,
18 download, and play music.

19 140. One way Defendant is illegally using Blue Spike's technology is by selling
20 monthly subscription plans for "high quality audio." Ex. 1, Spotify Premium Web at
21 <https://www.spotify.com/us/premium/?checkout=false> as seen on 7/23/2018.
22

23 141. Another way the Defendant directly infringes is through its quality control
24 testing of its Accused System that infringes Blue Spike's patent method. Defendant
25 uses a computer to access its software/firmware to test its system that sends a
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1 secure digital data. Defendant's system creates, a key in advance to later be used to
2 manipulate the secure digital signal by use of information contained the file format
3 information. *See e.g.* Ex. F, Infringement Chart for claim 1 of the '276 Patent.
4

5 **Indirect Infringement.**

6 142. Defendant has been and now is indirectly infringing by way of inducing
7 infringement by others and/or contributing to the infringement by others of the
8 '276 Patent in this State, in this judicial district, and elsewhere in the United States,
9 by, among other things, making, using, importing, offering for sale, and/or selling,
10 without license or authority, infringing services for use in systems that fall within
11 the scope of one or more claims of the '276 Patent. Such products include, without
12 limitation, one or more of the Accused Products and Services. By making, using,
13 importing offering for sale, and/or selling such, Defendant injured Blue Spike and is
14 thus liable to Blue Spike for infringement of the '276 Patent under 35 U.S.C. § 271.
15
16

17 143. Defendant actively induces infringement under Title 35 U.S.C. § 271(b).
18 Defendant performed actions that induced infringing acts that Defendant knew or
19 should have known would induce actual infringements. *See Manville Sales Corp. v.*
20 *Paramount Sys., Inc.*, 917 F.2d 544, 553 (Fed.Cir.1990), quoted in *DSU Med. Corp. v.*
21 *JMS Co.*, 471 F.3d 1293, 1306 (Fed.Cir.2006) (en banc in relevant part). "[A] finding
22 of inducement requires a threshold finding of direct infringement—either a finding
23 of specific instances of direct infringement or a finding that the accused products
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1 necessarily infringe.” *Ricoh*, 550 F.3d at 1341 (citing *ACCO Brands, Inc. v. ABA Locks*
2 *Manufacturer Co.*, 501 F.3d 1307, 1313, (Fed. Cir. 2007).

3
4 144. Plaintiff will rely on direct and/or circumstantial evidence to prove the intent
5 element. *See Fuji Photo Film Co. v. Jazz Photo Corp.*, 394 F.3d 1368, 1377 (Fed. Cir.
6 2005) (“A patentee may prove intent through circumstantial evidence.”); *Water*
7 *Techs. Corp. v. Calco, Ltd.*, 850 F.2d 660, 668 (Fed. Cir. 1988) (“While proof of intent
8 is necessary, direct evidence is not required; rather, circumstantial evidence may
9 suffice.”).

10
11
12 145. Defendant took active steps to induce infringement, such as advertising an
13 infringing use, which supports a finding of an intention for the accused product to
14 be used in an infringing manner. *See Metro-Goldwyn-Mayer Studios Inc. v. Grokster,*
15 *Ltd.*, 545 U.S. 913, 932, 125 S. Ct. 2764, 162 L. Ed. 2d 781 (2005) (explaining that
16 the contributory infringement doctrine “was devised to identify instances in which it
17 may be presumed from distribution of an article in commerce that the distributor
18 intended the article to be used to infringe another’s patent, and so may justly be
19 held liable for that infringement”).

20
21
22 146. It is not necessary for Plaintiff to indicate specific customers directly
23 infringing the Patents-in-Suit through the use of Defendant’s products and services.
24 *See In re Bill of Lading Transmission and Processing System Pat. Litig.*, 681 F.3d 1323,
25 1336 (Fed. Cir. 2012).

1 **Induced Infringement.**

2 147. Defendant induces infringement of its customers, who use the infringing
3 functionality, and its partners and resellers, who offer for sale and sell the Accused
4 Products and Services.
5

6 148. Defendant induces end users of the Accused Products and Services to infringe.
7 Defendant induces its customers to infringe at the very least by providing
8 information on how to access the Internet via its router system.
9

10 149. Defendant also provides customers other incentives to use the infringing
11 services, such as premium services. *See* Exhibit 1; *see Power Integrations v. Fairchild*
12 *Semiconductor*, 843 F.3d at 1335 (“[W]e have affirmed induced infringement
13 verdicts based on circumstantial evidence of inducement (e.g., advertisements, user
14 manuals) directed to a class of direct infringers (e.g., customers, end users) without
15 requiring hard proof that any individual third-party direct infringer was actually
16 persuaded to infringe by that material.”).
17
18

19 150. Defendant had knowledge of the ’276 Patent at least as early as the service of
20 this complaint, and has known since then that the Accused Products and Services
21 infringe the Patents-in-Suit. Nevertheless, Defendant has continued to induce its
22 customers and partners to infringe. It does so through its instructions
23 accompanying the Accused Products and Services, its technical support,
24 demonstrations and tutorials. Thus, Defendant is liable for infringement of one or
25 more claims of the ’276 Patent by actively inducing infringement.
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1 151. The Ninth Circuit has rejected the notion that a plaintiff must allege the facts
2 from which knowledge is to be inferred. *In re GlenFed, Inc. Sec. Litig.*, 42 F.3d 1541,
3 1545–47 (9th Cir. 1994), *superseded by statute on other grounds as recognized in Ronconi*
4 *v. Larkin*, 253 F.3d 423, 429 n.6 (9th Cir. 2001). Rather, it is sufficient to allege
5 knowledge or intent “generally, just as the rule states—that is, simply by saying
6 that [it] existed.” *Id.* at 1547.
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9 **Contributory Infringement.**

10 152. Defendant is also a contributory infringer. In addition to proving an act of
11 direct infringement, plaintiff contends that defendant knew that the combination for
12 which its components were especially made was both patented and infringing.
13

14 153. The contributory infringement doctrine was devised to identify instances in
15 which it may be presumed from distribution of an article in commerce that the
16 distributor intended the article to be used to infringe another’s patent, and so may
17 justly be held liable for that infringement. *See Metro-Goldwyn-Mayer Studios Inc. v.*
18 *Grokster, Ltd.*, 545 U.S. 913, 932, 125 S. Ct. 2764, 162 L. Ed. 2d 781(2005).
19
20

21 154. Defendant contributed to the infringement by providing the Accused Products
22 and Services to its customers, partners and resellers.
23

24 155. The accused functionality in the Accused Products and Services has no
25 substantial non-infringing uses. *See, e.g., Lucent Techs., Inc. v. Gateway, Inc.*, 580 F. 3d
26 1301 (Fed. Cir. 2009) (holding that the substantial non-infringing uses element of a
27 contributory infringement claim applies to an infringing feature or component). An
28

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1 “infringing feature” of a product does not escape liability simply because the product
2 as a whole has other non-infringing uses. *See id.* at 1321.

3 **Plaintiff Suffered Damages.**

4
5 156. Defendant’s acts of infringement of the ’276 Patent have caused damage to
6 Blue Spike, and Blue Spike is entitled to recover from Defendant the damages
7 sustained as a result of Defendant’s wrongful acts in an amount described in the
8 prayer below. Defendant’s infringement of Blue Spike’s exclusive rights under the
9 ’276 Patent will continue to damage Blue Spike, causing it irreparable harm, for
10 which there is no adequate remedy at law, warranting an injunction from the Court.
11

12
13 157. On information and belief, the infringement of the ’276 Patent by Defendant
14 has been willful and continues to be willful. Defendant had knowledge of the ’276
15 Patent, including but not limited to at least one or more of the following events:
16

- 17 a. The filing of Blue Spike’s complaint against Defendant.
- 18 b. In the course of its due diligence and freedom to operate analyses.
- 19 c. News coverage of Blue Spike’s enforcement of this patent against other
20 infringers.
- 21
- 22 e. Part of the due diligence investigation performed for SEC filings.
- 23

24 158. On information and belief, Defendant has had at least had constructive notice
25 of the ’276 Patent by operation of law. Plaintiff believes the evidence provided
26 shows Defendant’s willful infringement is egregious. Even so, Plaintiff is not
27 required to prove egregiousness in its pleadings. “Even after Halo, broader
28

1 allegations of willfulness, without a specific showing of egregiousness, are sufficient
2 to withstand a motion to dismiss.” *Shire ViroPharma Inc. v. CSL Behring LLC*, CV
3 17-414, 2018 WL 326406, at *3 (D. Del. Jan. 8, 2018) (denying a defendant’s motion
4 to dismiss and noting “Defendants’ argument seems to conflate the standards for
5 pleading willful infringement with the standards for proving willful infringement.”).

6
7
8 159. A jury is capable, and indeed required, to examine facts that plausibly support
9 a finding of willful infringement. Here, the facts provide “a sufficient predicate” to
10 support a jury’s finding of willfulness. *See Barry v. Medtronic, Inc.*, 250 F. Supp. 3d
11 107, 111 (E.D. Tex. 2017) (listing a series of nine-factors utilized in the Federal
12 Circuit, including whether the infringer knew of the other’s patent protection and
13 investigated, the infringers behavior, defendant’s size and financial condition,
14 closeness of the case, duration of misconduct, and remedial action taken by
15 defendant once it was notified of infringement, as factors that are “a sufficient
16 predicate” of fact to support a jury’s finding of willfulness).

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19
20 160. The Ninth Circuit has rejected the notion that a plaintiff must allege the facts
21 from which knowledge is to be inferred. *In re GlenFed, Inc. Sec. Litig.*, 42 F.3d 1541,
22 1545–47 (9th Cir. 1994), *superseded by statute on other grounds as recognized in Ronconi*
23 *v. Larkin*, 253 F.3d 423, 429 n.6 (9th Cir. 2001). Rather, it is sufficient to allege
24 knowledge or intent “generally, just as the rule states—that is, simply by saying
25 that [it] existed.” *Id.* at 1547.
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REQUEST FOR RELIEF

Blue Spike incorporates each of the allegations in the paragraphs above and respectfully asks the Court to:

(a) enter a judgment that Defendant has directly infringed, contributorily infringed, and/or induced infringement of one or more claims of each of the Patents-in-Suit in the amount of reasonable royalty based on revenue of accused product and service sales of more than \$70 million and more than a total of \$280 million if damages are trebled;

(b) enter a judgment awarding Blue Spike all damages adequate to compensate it for Defendant’s infringement of, direct or contributory, or inducement to infringe, the Patents-in-Suit, including all pre-judgment and post-judgment interest at the maximum rate permitted by law;

(c) enter a judgment awarding treble damages pursuant to 35 U.S.C. § 284 for Defendant’s willful infringement of one or more of the Patents-in-Suit;

(d) issue a preliminary injunction and thereafter a permanent injunction enjoining and restraining Defendant, its directors, officers, agents, servants, employees, and those acting in privity or in concert with them, and their subsidiaries, divisions, successors, and assigns, from further acts of infringement, contributory infringement, or inducement of infringement of the Patents-in-Suit;

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1 (e) enter a judgment requiring Defendant to pay the costs of this action, including
2 all disbursements, and attorneys' fees as provided by 35 U.S.C. § 285, together with
3 prejudgment interest; and
4

5 (f) award Blue Spike all other relief that the Court may deem just and proper.
6

7 **DEMAND FOR JURY TRIAL**

8 Blue Spike demands a jury trial on all issues that may be determined by a
9 jury.
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Respectfully submitted,

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Counsel for Blue Spike, LLC

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this document was served on all counsel deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Federal Rule of Civil Procedure 5(d) and Local Rule CV-5(d) and (e), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by email, on this date stamped above.

/s/ Randall Garteiser

CERTIFICATE OF CONFERENCE

The undersigned certifies that the foregoing document was filed after having a meet and confer in an attempt to avoid motion practice under Rule 12.

/s/ Randall Garteiser